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Tenet Healthcare, Inc. d/b/a Sierra Vista Regional Medical Center and California Nurses Association. Case 31-CA-22648

August 29, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on April 18, 1997, the General Counsel of the National Labor Relations Board issued a complaint on June 26, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 31-RC-7328. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On August 4, 1997, the General Counsel filed a Motion for Summary Judgment. On August 7, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On August 20, 1997, the Respondent filed an opposition to the Motion for Summary Judgment.

Ruling on Motion for Summary Judgment

In its answer and in its response the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of its contentions in the representation proceeding that the unit improperly included supervisors and part-time employees, and that alleged supervisory conduct tainted the election.¹

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation pro-

¹ In its opposition to the Motion for Summary Judgment, the Respondent also argues that summary judgment is improper because the Board never ruled on its request for review of the inclusion of part-time employees in the bargaining unit. Contrary to the Respondent's assertion, this issue was considered by the Board and the Board's July 2, 1997 Order denied the Respondent's request for review of the Regional Director's Decision and Direction of Election with respect to all issues raised in the Respondent's request for review, including the part-time issue.

ceeding.² We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.³

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation with an office and place of business in San Luis Obispo, California, has been engaged in the operation of an acute care hospital. During the 12-month period preceding the issuance of the complaint, the Respondent in conducting its business operations described above, derived gross revenues in excess of \$250,000, and purchased and received at its San Luis Obispo, California facility goods valued in excess of \$50,000 directly from firms located outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held January 25, 1996, the Union was certified on January 8, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: Full-time and regular part-time registered nurses employed by Sierra Vista Medical Center in San Luis Obispo, California.

Excluded: Office clerical employees, managers, assistant manager, directors, coordinators including risk manager/infection control coordinator, education coordinator, quality improvement coordinator, pain center coordinator, case management coordinator, and clinical care director, all other employees, guards and supervisors as defined in the Act.

² We note that the United States Court of Appeals for the Ninth Circuit recently enforced the Board's decision in *Providence Hospital*, 320 NLRB 717 (1996), which was one of the cases relied on by the Board in denying review of the Regional Director's finding that the Respondent's RNs are not statutory supervisors. *Providence Alaska Medical Center v. NLRB*, 156 LRRM 2001 (9th Cir. 1997).

³ Member Higgins did not participate in the underlying representation case. However, he agrees that the Respondent has raised no new issues warranting a hearing in this "technical" 8(a)(5) case, and that summary judgment is therefore appropriate.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since January 30, 1997, the Union has requested the Respondent to bargain and, since March 21, 1997, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after March 21, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Tenet Healthcare, Inc. d/b/a Sierra Vista Regional Medical Center, San Luis Obispo, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with California Nurses Association as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: Full-time and regular part-time registered nurses employed by Sierra Vista Medical Center in San Luis Obispo, California.

Excluded: Office clerical employees, managers, assistant manager, directors, coordinators including risk manager/infection control coordinator, education coordinator, quality improvement coordinator, pain center coordinator, case management coordinator, and clinical care director, all other employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in San Luis Obispo, California, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 31 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 18, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 29, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with California Nurses Association as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on

terms and conditions of employment for our employees in the bargaining unit:

Included: Full-time and regular part-time registered nurses employed by us in our San Luis Obispo, California, facility.

Excluded: Office clerical employees, managers, assistant manager, directors, coordinators including risk manager/infection control coordinator, education coordinator, quality improvement coordinator, pain center coordinator, case management coordinator, and clinical care director, all other employees, guards and supervisors as defined in the Act.

TENET HEALTHCARE, INC. D/B/A SIERRA
VISTA REGIONAL MEDICAL CENTER